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A Legal Pathfinder Navigating the Bankruptcy Labyrinth

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The recent *In re Celsius Network LLC* case ([Case No. 22-10964 \(MG\), Doc. 4873](#) ([May 8, 2024](#)) is a thrilling legal drama where Jason Voelker, a shareholder acting for iCapital Management, fearlessly challenged conventional bankruptcy doctrine. His strategic use of obscure laws unorthodox arguments, and courtroom maneuvers painted him as a true legal pathfinder, seeking justice for shareholders through an intricate labyrinth of legal precedents and procedural hurdles.

The Case and Voelker's Multi-Layered Strategy

iCapital initially participated in the Chapter 11 plan's settlement. However, Voelker recognized shortcomings in the settlement that disadvantaged

iCapital. His counterattack involved navigating a complex maze of legal challenges:

Understanding Shareholder Standing Limitations (Rule 23.1): Unlike a typical lawsuit, shareholders cannot simply file a derivative action on behalf of a company. Voelker's success hinged on a nuanced understanding of Rule 23.1, which governs derivative shareholder standing. This rule requires that a shareholder first make reasonable efforts to demand action from the company's management before filing a court action, causing inherent delays for shareholders seeking to act quickly within the context of a bankruptcy.

Turning Limitation into Opportunity: Voelker ingeniously flipped the procedural hurdles of Rule 23.1 into his favor, arguing for equitable tolling, a legal doctrine that pauses deadlines due to extenuating circumstances. He contended that compliance with Rule 23.1's procedural requirements would have been futile prior to the bankruptcy filing. Judge Glenn's openness to this argument allowed Voelker to proceed with his motion, opening a gateway in the labyrinth.

The Wyoming Law Gambit: A Strategic Masterstroke Voelker's next move displayed exceptional legal research and audacity. Wyoming, a frontrunner in cryptocurrency legislation, recently created a specific bailment mechanism for cryptocurrency. Leveraging this niche legislation, he argued that the bailment agreement governing the entrusted assets exempted them from the bankruptcy estate. If successful, this would carve out a path for recovery outside the limitations of the confirmed plan.

Confronting Traditional Barriers (Krys): In a bold move, Voelker sought to defy the principle established in *Krys v. Official Comm. of Unsecured Creditors of Refco, Inc. (In re Refco Inc.)*, 505 F.3d 109, 117 n.10 (2d Cir. 2007), arguing that iCapital retained the right to seek redress against Celsius even after confirming the plan. He argued that the plan and injunction only enjoined

actions relating to the bankruptcy estate, while his theory placed the assets under the bailment agreement outside of the estate and into a collateral arena, subject to a different set of rules and potentially allowing him as a shareholder to recover them directly from Celsius, bypassing the bankruptcy court's control and proceeding through a shareholder derivative action.

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The Court's Response: A Catalyst for Legal Discourse

While the court ultimately denied Voelker's motion, Judge Glenn's decision in *In re Celsius Network LLC* is garnering significant attention within the legal community. The lack of existing legal precedent on the specific issues raised by Voelker, coupled with the complexity of his arguments, likely played a role in Judge Glenn's decision to issue a published opinion. Some speculate that Judge Glenn, impressed by the ingenuity of Voelker's strategy and the potential ramifications for future cases, opted for a published decision to establish a clear legal record on these novel issues. This decision serves as a valuable resource for legal professionals grappling with similar situations at the intersection of bankruptcy and emerging technologies like cryptocurrency. Others, however, suggest that the published decision may have been intended to discourage similar challenges in the future, given the potential for disruption to the bankruptcy process if such arguments were to gain traction.

The case tested the boundaries of a newly enacted Wyoming law within the context of bankruptcy. Judge Glenn's openness to consider Voelker's unique

standing and bailment arguments, despite ultimately denying them, hints at a potential receptiveness to innovative arguments grounded in emerging areas of law.

Voelker's Legacy: A Champion for Shareholder Advocacy

The Celsius case serves as a testament to the power of strategic legal thinking, meticulous research, and unwavering pursuit of justice.

Empowering Shareholder Activism: Voelker's approach demonstrates that shareholders, even when facing seemingly insurmountable procedural hurdles, can find creative ways to assert their rights. His work empowers all shareholders and legal professionals to critically examine limitations and explore alternative avenues for action, even within the context of bankruptcy law's complexity.

Cryptocurrency and Bankruptcy Law Intersect: The case underscores the increasing necessity to understand the evolving landscape of cryptocurrency law and its complex interplay with bankruptcy proceedings. Voelker's use of Wyoming's bailment provision showcases the growing need for continuous legal education regarding emerging legal frameworks in this rapidly evolving space.

The Way Forward: A Call for Legal Innovation

The *In re Celsius Network LLC* case serves as a powerful reminder that bankruptcy law is in constant flux. Voelker's audacious challenge has exposed vulnerabilities in the existing framework and ignited a debate about the need for more robust shareholder protections in bankruptcy proceedings, especially regarding emerging legal and technological advancements. His legacy is one of unwavering dedication to client advocacy, a relentless pursuit of legal innovation, and a drive to illuminate unexplored pathways within the intricate legal labyrinth of bankruptcy proceedings.

Disclaimer: This article is solely for informational purposes and does not constitute legal advice.

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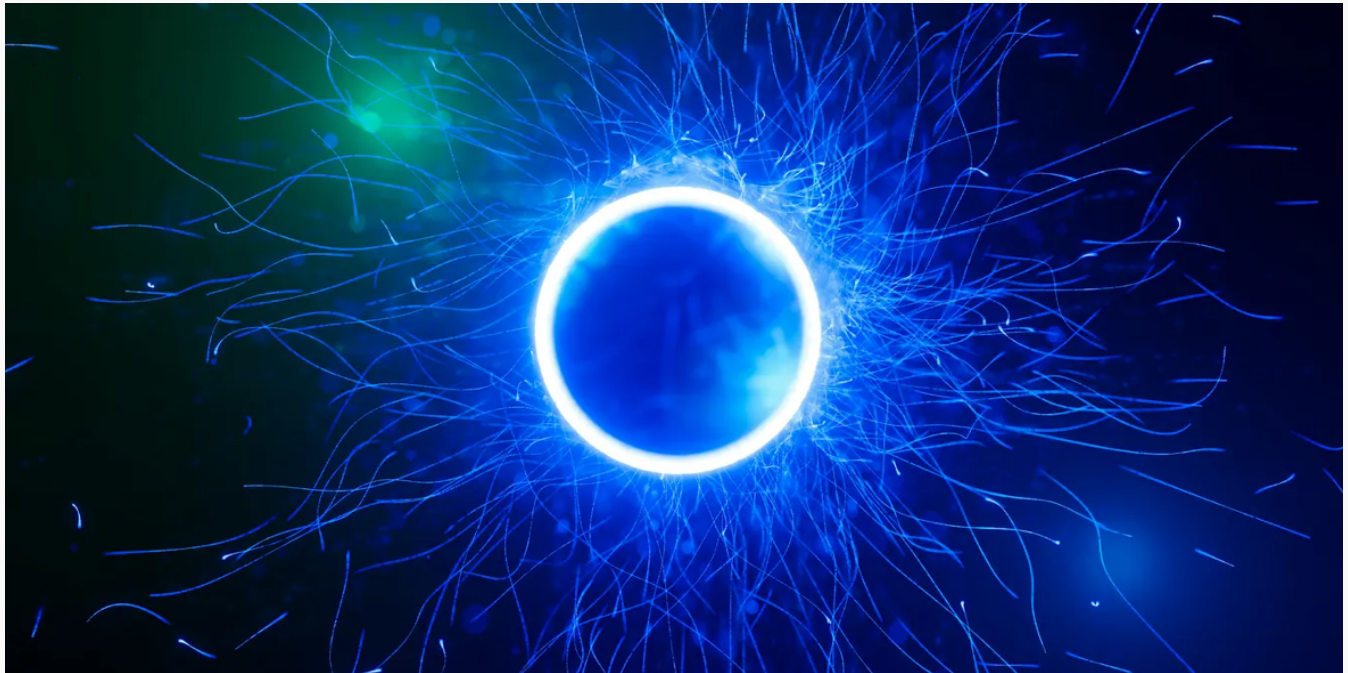


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